

DOCUMENT RESUME

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[Extended Detail to Higher Grade Position]. B-183937. June 23, 1977. 3 pp.

Decision re: Kenneth Penner; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: United States Customs Service.

Authority: 5 U.S.C. 5596 (Supp. V). 5 U.S.C. 301. 55 Comp. Gen. 539. 54 Comp. Gen. 263. B-183086 (1977). B-18173 (1974). F.P.M. ch. 171. 5 C.F.R. 550. Civil Service Commission Bulletin 300-40, para. 8D. B-178156 (1973). 52 Comp. Gen. 920.

Warren F. Brecht, Assistant Secretary for Administration, Department of the Treasury, requested a decision regarding an employee's retroactive temporary promotion to a higher grade position. The employee was entitled under regulations to retroactive temporary promotion and backpay for extended detail to a higher grade position beyond 60 days. Nondiscretionary agency regulations demand temporary promotion on the 61st day of detail. (Author/DJM)

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DECISION



**THE COMPTROLLER
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-183937.

DATE: June 23, 1977

MATTER OF: Kenneth Fenner - Extended Detail
to Higher Grade Position

DIGEST: Employee of U.S. Customs Service may be granted retroactive temporary promotion and back pay under 5 U.S.C. 5596 (Supp. V, 1975) for extended detail to higher grade position beyond 60 days where nondiscretionary agency regulations require temporary promotion for such detail. See 55 Comp. Gen. 539 (1975) and 54 Comp. Gen. 263 (1974).

By a letter dated May 9, 1975, Mr. Warren F. Brecht, then Assistant Secretary for Administration, Department of the Treasury, requested an advance decision regarding a retroactive temporary promotion for Mr. Kenneth Fenner, an employee of the U.S. Customs Service. Mr. Fenner, a Budget Officer, GS-13, was temporarily assigned to the position of Acting Regional Director of the Financial Division, GS-14, on September 9, 1974. He served in this capacity until March 14, 1975.

In his letter the Assistant Secretary requested that we reconsider our decision in B-178156, June 5, 1973, (52 Comp. Gen. 920), in which we disallowed a retroactive temporary promotion under facts similar to the present case where no mandatory or nondiscretionary provisions of the Federal Personnel Manual, Chapter 300, had been violated. The Assistant Secretary stated that, in addition to the requirements of the Federal Personnel Manual covering extended details to higher grade positions, the Commissioner of Customs in a memorandum dated May 13, 1974, in effect at the time Mr. Fenner was detailed to a higher grade position, had established the following policy for the U.S. Customs Service:

"(2) If the need is for 30 to 60 days, the employee detailed to the position should be given a temporary promotion.

"(3) If the need is for an excess of 60 days but not permanent, the candidate selected for the detail must be identified under merit procedures and given a temporary promotion."

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Subsequent to the Assistant Secretary's letter, we did, in Everett Turner and David L. Caldwell, 55 Comp. Gen. 539 (1975), overrule our decision in 52 Comp. Gen. 920. We based our reversal on a determination by the Civil Service Commission's Board of Appeals and Review that those provisions of the Federal Personnel Manual (FPM), Chapter 300, regarding extended details to higher grade positions beyond 120 days were mandatory on Federal agencies and departments. Recently, we reaffirmed Turner-Caldwell in Reconsideration of Turner-Caldwell, B-183086, March 23, 1977, 56 Comp. Gen. _____.

In light of Turner-Caldwell, it is apparent that Mr. Penner is at least entitled to a retroactive temporary promotion for that period of the extended detail beginning 121 days after September 9, 1974. However, the question remaining is whether he is entitled to such a promotion for that period of the detail beyond 60 days under the provisions of the Commissioner's memorandum quoted above.

An agency may promulgate supplemental personnel regulations and policies for its employee within the general framework and consistent with Civil Service Commission regulations. See 5 U.S.C. 301 and FPM, Chapter 171. The policy of the U.S. Customs Service is clearly stated in the Commissioner's memorandum of May 13, 1974. An employee must be given a temporary promotion when he is needed for a detail beyond 60 days. The language is similar to that contained in Chapter 300, Subchapter 8, of the Federal Personnel Manual, which was held by our Turner-Caldwell decisions to be nondiscretionary. Although the FPM specifies a period of 120 days, we see no reason why the Customs Service could not select a shorter period of time for its detailed employees.

Although the Customs Commissioner's memorandum also required that competitive promotion procedures be followed, we do not find the failure of the Customs Service to follow these procedures a bar to the granting of a retroactive temporary promotion in the instant case. See the instructions contained in Civil Service Commission Bulletin 300-40, dated May 25, 1977, regarding the implementation of Turner-Caldwell. In paragraph 8D on page 5 of Bulletin 300-40, the Civil Service Commission states as follows:

"There may be instances where competition for the assignment should have but did not occur. Because of the limited applicability of the decision and because of the difficulty of applying retroactivity

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in this type of case, agencies will not be required to reconstruct past actions for purposes of retroactively granting promotion under competitive procedures in cases arising under that decision."

Accordingly, we believe that the policy of the Customs Service regarding details beyond 60 days was nondiscretionary and that the agency had a mandatory duty to promote Mr. Fenner on the 61st day after September 9, 1974. See 54 Comp. Gen. 263 (1974) and B-181173, November 13, 1974. Pursuant to the foregoing, Mr. Fenner is entitled to a retroactive promotion to grade GS-14 for the stated period and back pay under the provisions of 5 U.S.C. 5596 (Supp. V, 1975) and Civil Service Commission regulations contained in 5 C.F.R. Part 550, subpart H.


Deputy Comptroller General
of the United States